

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1507 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

VIKAS NARAYAN BADDI

Versus

STATE OF GUJARAT

Appearance:

MR KS Nanavati, Sr. Advocate, with UI VYAS for Petitioner
MR KT DAVE, AGP, for Respondents No. 1 to 5
MS PJ DAVAWALA for Respondent No. 6

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 28/04/2000

ORAL JUDGEMENT

1. District Magistrate, Ahmedabad, passed an order
on February 19, 2000, in exercise of powers under Section
3 of the Prevention of Black Marketing and Maintenance of
Supplies of Essential Commodities Act, 1980 ("PBM Act")

for short), detaining Narayan Tukaram Baddi of Ahmedabad, under the provisions of the said Act with a view to preventing him from acting in any manner prejudicial to the maintenance of supplies of essential commodity like solvent to the community.

2. The petitioner, who is the son of the detenu, has challenged this order on various grounds. However, learned Senior Counsel, Mr. Nanavati, contended that if the order of detention is seen, it is dated the 19th February, 2000. If the grounds of detention are seen, they are dated the 21st February, 2000 and the order referred to in the grounds of detention is also shown to be dated the 21st February, 2000. Mr. Nanavati, therefore, contended that on the 19th February, 2000, when the order was passed, grounds of detention were not in existence. There is another fold of his argument to the effect that when the grounds of detention referred to an order dated the 21st February, 2000, no such order is served on the detenu and, therefore, the grounds of detention do not relate to order dated the 19th February, 2000. In either way, the detention order must go. Anticipating an argument about an error in writing the dates, Mr. Nanavati submitted that this would reflect non-application of mind, if not anything else.

2.1 Mr. Nanavati further submitted that this reference to dates indicates that it would lead to a situation where the detenu would not be able to understand what is the case against him. He would, therefore, be deprived of the right of making an effective representation, which would also vitiate the detention.

2.2 Mr. Nanavati submitted further that the detaining authority, while passing the order of detention, has not considered certain relevant material before it. The order, therefore, is vitiated. He submitted that the detaining authority has, in the affidavit in reply, in clear terms, stated that the documents referred to in the amended paragraph L(III) and L(IV), and (F) and (O) of the petition were placed before the authority, but they were not considered by the detaining authority. This having been done, the order would stand vitiated. In support of his argument, Mr. Nanavati has placed reliance on the decision of the Apex Court in the case of Ahmad Nassar v. State of Tamil Nadu & Ors. (1999) 8 SCC 473.

2.3 Mr. Nanavati further submitted that when the order was passed, the F.I.R. lodged against the detenu in

respect of this very incident, was in existence, but the same has not been considered by the detaining authority.

2.4 A representation dated February 29, 2000 was made on behalf of the detenu to the detaining authority. The same has been forwarded to the Government on the 1st March, 2000 and the Government has decided it on the 18th March, 2000. However, this decision was communicated to the detenu on April 11, 2000. This has, therefore, infringed the right of the detenu of making an effective representation and his continued detention, therefore, would be vitiated.

2.5 Mr. Nanavati further contended that in the grounds of detention, the detaining authority has relied on extraneous material and this creeping in of extraneous consideration would vitiate the order of detention. For this purpose, attention of this Court was drawn to the observations made by the detaining authority in the grounds of detention (internal page 15) to the effect that attempt is made by the detenu to add solvent to the fuel which does not conform to the required standards and, thereby, adds to pollution injurious to the health of the society as a whole, and further to the effect that solvent is mixed with petrol by the detenu although it does not have the qualities of petrol and, thereby, breach of Motor Spirit and High Speed Diesel (Regulation and Prevention of Malpractices) Order, 1998, which is also extraneous. He, therefore, contended that the petition may be allowed and the order of detention may be quashed and set aside.

3. Mr. K.T. Dave, learned Assistant Government Pleader, has opposed this petition. He has drawn attention of this Court to the affidavit in reply filed on behalf of the State Government as well as by the detaining authority. He has also drawn attention of this Court to certain relevant material in the petition. He has drawn attention to latter portion of the grounds of detention to indicate that although the grounds of detention, initially, referred to the order dated the 21st February, 2000, the latter portion of the grounds refers to order dated the 19th February, 2000, which is the correct date. According to Mr. Dave, reference to order dated the 21st February, 2000 in the grounds of detention appears to be a slip of pen or a genuine and bona fide mistake. Mr. Dave further contended that the grounds of detention are dated the 21st February, 2000 because they were served on the detenu on that day. It is not that the grounds did not exist on the date of passing of the order. He says that he will be able to

satisfy this Court on this point by showing the file of the detaining authority. Mr. Dave submitted that, as such, a mistake may not be taken to vitiate the order of detention.

3.1 As regards the representation, he has drawn attention of this Court to the affidavit in reply filed on behalf of the State Government. He submitted that a representation dated February 29, 2000 was addressed on one hand to the detaining authority and, on the other hand, on the same day, another representation was made to the State Government on March 18, 2000 and, therefore, it is not that the representation dated the 29th February, 2000, addressed to the detaining authority was considered by the State Government. In fact, the representation made to the detaining authority on the 29th February, 2000 and received by the authority on the 1st March, 2000 was considered by the detaining authority on that very day and rejected. A copy of the same was forwarded to the State Government for further compliance. This fact is revealed in the affidavit of the State Government. Therefore, Mr. Dave contended that there are number of representations made by the detenu and this representation cannot be said to have been not considered within reasonable time.

3.2 As regards non-consideration of vital documents, Mr. Dave submitted that the detaining authority has, in fact, considered those documents and supplied copies of those documents to the detenu and, therefore, there is no substance in the argument made on behalf of the detenu. He, therefore, urged that the petition may be dismissed.

4. The Union of India is represented by learned Additional Central Government Standing Counsel, Ms. Davawalla. However, no affidavit in reply on part of the Union of India, as specific contentions are not raised against the Union of India.

5. Having regard to rival side contentions, the first point that requires consideration is regarding non-consideration of relevant materials, which alone, in the opinion of this Court, is sufficient to quash the order of detention passed against the detenu. In this regard, the petitioner has come with a specific contention in amended paragraph L(iii), which reads as under :-

"L(iii) :- The petitioner submits that the detaining authority was required to consider all

the relevant and material documents before passing the impugned order of detention. The detaining authority has passed the impugned order of detention against the detenu for his alleged prejudicial activity of diverting solvent for its ultimate use of adulterating petrol. The transaction between the detenu and certain out of Gujarat purchasers of solvent from the detenu have been made the subject matter of grounds of detention. The petitioner submits that under cover of letters dated 2.2.2000, 9.2.2000 and 10.2.2000 addressed to the Police Inspector, LCB, Ahmedabad (Rural) and under cover of letter dated 18.2.2000, addressed by the detenu to the Deputy Food Controller, various transactions undertaken by the detenu have been explained. Alongwith the aforesaid four letters, several documents have been submitted, which indicate that the parties with whom the detenu transacted business, were found to be genuine parties holding valid land existing SSI and Sales-tax registration, Explosive licence and other documents which generally indicate that the transactions entered into by the detenu are genuine and bonafide. The documents submitted along with the aforesaid letters also indicate that sufficient care was taken by the detenu for verifying credentials of the out of Gujarat purchasers before transacting business with them. The documents supplied also include 'C' Forms covering all the sales made by the detenu, which 'C' Forms were received by the detenu from various out of the State purchasers including the parties whose names are referred to in the grounds of detention. The aforesaid document ought to have been considered by the detaining authority before passing the impugned order of detention. From the documents supplied to the detenu, it seems that voluminous documents running into 543 pages were submitted by Shri R.K. Patel, Police Inspector, LCB Ahmedabad (Rural), respondent No.5 herein, to the Food Controller, Ahmedabad, under cover of letter dated 15.2.2000. It seems that either the sponsoring authority has not placed before the detaining authority the aforesaid documents or the detaining authority has not considered the aforesaid documents. In any view of the matter, non-consideration of the aforesaid documents has resulted into non-application of mind on the part of detaining authority and non-supply thereof has affected the detenu's right of making an

effective representation."

In this connection, the detaining authority, in its further affidavit, has come with this contention :-

"4. With regard to paragraph 8L(iii) of the petition, I deny the contentions raised therein. I further say that the documents referred to in this para were placed before me, but I have not relied upon the said documents for the purpose of passing the order of detention and therefore non-consideration of aforesaid documents does not arise as I have stated earlier those documents are not relied upon for the purpose of passing the order of detention and therefore the same are not supplied to the detenu."

6. The picture, therefore, that emerges is that the detaining authority refused to consider material placed before it while passing the order of detention. The argument advanced by Mr. Dave, learned Assistant Government Pleader, that these documents were, in fact, considered by the detaining authority and copies thereof have been supplied to the detenu, therefore, cannot be accepted. A plain reading of the contention raised by the detenu indicates that an attempt is made by the detenu to indicate that his transactions are genuine and attempt is made to explain these transactions. The documents included Form 'C' received by the detenu from various out of State purchasers including the parties whose names are referred to in the grounds of detention and, therefore, it was the duty of the detaining authority to have considered these documents, as they cannot be considered to be irrelevant. It is in the form of a representation or an attempt to indicate that the transactions are genuine and that detention is not required. Failure on part of the detaining authority in considering these documents would vitiate the order of detention. In this regard, the decision of the Apex Court in the case of Ahmad Nassar v. State of Tamil Nadu (supra) can be referred to. It has been observed that every conceivable material which is relevant and vital and which may have a bearing on the issue, should be placed before the detaining authority which, fortunately, seems to have been done in the instant case by the sponsoring authority as is reflected from the affidavit in reply filed by the detaining authority. The Apex Court observed that there should be consideration of all

relevant material in case such materials were within the reach of the detaining authority till a formal detention order was issued. In that case, there was non-consideration of relevant documents on account of non-placement of those documents before the detaining authority. In the instant case, documents, though placed before the detaining authority, are not considered by the detaining authority. The Apex Court observed that non-consideration of relevant documents by the detaining authority vitiates the order of detention. It is the duty of the detaining authority to consider all relevant documents before passing the order, which, in the instant case, the detaining authority has failed to do.

6.1 Learned Senior Counsel places on record the documents referred to in paragraph L(iii). A look at these documents indicates that an attempt was made by the detenu to show that he is not indulged in the activities which are alleged to have been committed by him and that his transactions are genuine. The documents, therefore, attained relevance and ought to have been considered by the detaining authority. The order of detention, therefore, must fall on this ground alone.

7. At this stage, learned Senior Counsel, Mr. Nanavati, does not press for a verdict on the other contentions raised by him.

8. Apart from merits, this particular case has very peculiar facts. It has been contended and not controverted by the other side that the petitioner has been ailing from various physical ailments and has been more or less under intensive care treatment even during detention. The petitioner had urged for indulgence of this Court for a priority. However, the matter has reached hearing even without giving it a priority. But an exercise was undertaken by this Court to know whether a priority requires to be given in this case on account of ill-health of the petitioner. A report was received in this regard along with a certificate which carried a medical opinion as under :-

"In my opinion, he (petitioner) is at high risk and requires urgent and intensive treatment with complete bed rest and mental rest. He may require expert opinion and management with cardiac monitoring to avoid any serious complications which may prove to be fatal at any time."

Attention of this Court was drawn to a decision of the

Apex Court in the case of Manilal Manoharbhai Patel v. State of Gujarat & Ors., 1999 SCC (Criminal) 1321, where in almost similar situation, the Apex Court released the detenu from detention on ground of ill-health. This Court, however, does not enter into the arena in view of the fact that the petition, even otherwise, merits allowance.

9. In view of the above discussion, the petition is allowed. The impugned order of detention dated February 19, 2000, passed against the detenu is hereby quashed. The detenu-Narayan Tukaram Baddi is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

10. It is stated that the petitioner is, at present, in Sabarmati Central Prison. Writ, therefore, to go to that prison.

[A.L. DAVE, J.]

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